



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

■
Docket No. 2257-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 7 June 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 29 September 1978. The record shows during your first enlistment, you received NJP for wrongful possession of a controlled substance. You subsequently completed this enlistment with an Honorable characterization of service on 29 June 1982 and immediately reenlisted.

On 16 May 1985, you received non-judicial punishment (NJP) for wrongful use of marijuana. On 30 July 1985, you were issued an administrative remarks (Page 13) counseling advising you that your past record of misconduct for drug abuse is such that any further drug involvement may

result not only in disciplinary action, but in processing for administrative discharge from the Navy. The record shows, on 27 December 1985, you commenced a period of unauthorized absence (UA) that concluded upon your return to military authorities on 30 December 1985, a period totaling three days. On 3 April 1986, you received a second NJP for wrongful use of marijuana.

Subsequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You were advised of your procedural rights; you waived your procedural right to consult with military counsel, and to present your case to an administrative discharge board (ADB). On 14 April 1986, you received an evaluation from the Counseling and Assistance Center (CAAC), the CAAC found you to be psychologically dependent on drugs and alcohol. The CAAC recommended that you afforded treatment at a Department of Veteran's Affairs (VA) hospital if you become amenable before separation. The CAAC noted you did not want treatment, and that you stated you "plan to continue your drug use." Your commanding officer (CO) forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. On 3 June 1986, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to drug abuse.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 25 April 1991, based on their determination that your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to change your discharge character of service to be eligible for veterans' benefits and to receive a Good Conduct Medal (GCM) for your first period of enlistment. Additionally, the Board considered your contentions that your punishment was too harsh for a "young and undeveloped mind," you were discriminated against at your last duty station, and your lost time is questionable. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple drug offenses. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, the Board also

determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. In addition, while the Board took into consideration your contentions, the Board noted you provided no evidence to substantiate your contentions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity.

With regard to your request for the GCM, the GCM was issued to every active duty enlisted Sailor who completed four years of Honorable and faithful service with no convictions by court-martial, NJPs, or civilian convictions involving moral turpitude. Based on your record of misconduct, the Board concluded you did not qualify for the GCM because you did not complete four consecutive years of service without a NJP. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

Be advised, the Board believes that under current regulations you may be eligible for veterans' benefits which accrued during your first period of service. Whether or not you are eligible for benefits is a matter under the cognizance of the Department of Veterans Affairs (VA), and you should contact the nearest office of the VA concerning your right to apply for benefits.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

6/21/2023

